

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONNELL LLOYD,

Plaintiff,

-against-

H.O. REGISFORD, et al. ,

Defendants.

ORDER OF SERVICE

22-CV-03744 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff, who is currently incarcerated at Auburn Correctional Facility, brings this pro se action under 42 U.S.C. § 1983, alleging that Defendants violated his rights while he was confined at Sing Sing Correctional Facility in Ossining, New York. Plaintiff was granted leave to provide in forma pauperis (“IFP”) on June 22, 2022. (Doc. 5).

The Court issued a *Valentin* Order on July 11, 2022, directing the New York State Attorney General’s Office “to identify the John Doe correction officers who were involved in the incidents Plaintiff described that occurred on November 17, 2021, at Sing Sing Correctional Facility.” (Docket No. 8, at 2). On September 9, 2022, the New York State Attorney General’s Office filed a response, identifying the John Doe Defendants as Correction Officer Henry Gutierrez (“Gutierrez”) and Correction Officer Miguel Malave (“Malave”). (Doc. 11). The Complaint was accordingly amended to name Gutierrez and Malave as defendants in this action. (Doc. 12).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil

Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court ordered that a summons be issued as to Defendants Gutierrez and Malave. The Court therefore extends the time to serve until 90 days after the date the summons is issued as to Gutierrez and Malave. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Gutierrez and Malave through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is respectfully directed to: (i) terminate the two John Doe Defendants from the caption of this action; and (ii) mail a copy of this order to Plaintiff.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for Defendants Gutierrez and Malave and deliver all documents necessary to effect service to the U.S. Marshals Service.

SO ORDERED.

Dated: White Plains, New York
December 30, 2022

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Correction Officer Henry Gutierrez
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562
2. Correction Officer Miguel Malave
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562